

USA vs. Arthur - Jury Trial - Vol. 3 - January 21, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA,) Case No. 4:19-CR-774
Plaintiff,) COA No. 21-50607
vs.) Pecos, Texas
THOMAS ALAN ARTHUR,) January 21, 2021
Defendant.) 8:58 a.m.

TRANSCRIPT OF JURY TRIAL - VOL. 3
BEFORE THE HONORABLE DAVID COUNTS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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1 **APPEARANCES: (CONTINUED)**

2

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7 Proceedings reported by machine shorthand reporter.
8 Transcript produced by computer-aided transcription.

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Ann M. Record, RMR, CRR, CMRS, CRI

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P R O C E E D I N G S

THE COURT: Mr. Berry, outside the presence of the jury, before we bring them in, do you need to bring up anything, sir?

MR. BERRY: No.

THE COURT: Mr. Bennett?

MR. BENNETT: No, Your Honor.

THE COURT: All right. We're clear? Everybody is good and everything?

MR. BERRY: Yes.

MR. BENNETT: Yes.

THE COURT: Looks good.

Okay. Let's bring them in.

(Jury enters at 8:58 a.m.)

THE COURT: Good morning. We have the charge. It is a little warm in here. We've asked them to bring it down. I'm not sure how it got so warm so quickly.

As I read, you're welcome to read along with me or just listen along, whichever you'd like to do.

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow

1 and apply in arriving at your verdict.

2 First, I will give you some general instructions
3 which apply in every case, for example, instructions about
4 burden of proof and how to judge the believability of
5 witnesses. Then I will give you some rules of law about this
6 particular case, and finally I will explain to you the
7 procedures you should follow in your deliberations.

8 You, as jurors, are the judges of the facts. But in
9 determining what actually happened -- that is, in reaching your
10 decision as to the facts, it is your sworn duty to follow all
11 of the rules of law as I explain them to you.

12 You have no right to disregard or give special
13 attention to any one instruction, or to question the wisdom or
14 correctness of any rule I may state to you. You must not
15 substitute or follow your own notion or opinion as to what the
16 law is or ought to be. It is your duty to apply the law as I
17 explain it to you regardless of the consequences.

18 It is also your duty to base your verdict solely upon
19 the evidence, without prejudice or sympathy. You are to decide
20 this case only on the evidence which has been admitted into
21 court during trial. That was the promise you made and the oath
22 you took before being accepted by the parties as jurors, and
23 they have the right to expect nothing less.

24 The indictment or formal charge against the defendant
25 is not evidence of guilt. Indeed, the defendant is presumed by

1 the law to be innocent. The defendant begins with a clean
2 slate. The law does not require the defendant to prove his
3 innocence or produce any evidence at all and no inference
4 whatever may be drawn from the election of the defendant not to
5 testify.

6 The government has the burden of proving the
7 defendant guilty beyond a reasonable doubt, and if it fails to
8 do so, you must acquit the defendant. While the government's
9 burden of proof is a strict or heavy burden, it is not
10 necessary that the defendant's guilt be proved beyond all
11 possible doubt. It is only required that the government's
12 proof exclude any "reasonable doubt" concerning the defendant's
13 guilt.

14 A "reasonable doubt" is a doubt based upon reason and
15 common sense after careful and impartial consideration of all
16 the evidence in the case. Proof beyond a reasonable doubt,
17 therefore, is proof of such a convincing character that you
18 would be willing to rely and act upon it without hesitation in
19 making the most important decisions of your own affairs.

20 As I told you earlier, it is your duty to determine
21 the facts. To do so, you must consider only the evidence
22 presented during the trial. Evidence is the sworn testimony of
23 the witnesses, including stipulations, and the exhibits. The
24 questions, statements, objections, and arguments made by the
25 lawyers are not evidence.

1 The function of the lawyers is to point out those
2 things that are most significant or most helpful to their side
3 of the case, and in so doing to call your attention to certain
4 facts or inferences that might otherwise escape your notice.
5 In the final analysis, however, it is your own recollection and
6 interpretation of the evidence that controls in the case. What
7 the lawyers say is not binding upon you.

8 During the trial I sustained objections to certain
9 questions. You must disregard those questions entirely. Do
10 not speculate as to what the witness would have said if
11 permitted to answer the question. Also, certain testimony or
12 other evidence has been ordered removed from the record and you
13 have been instructed to disregard this evidence. Do not
14 consider any testimony or other evidence which has been removed
15 from your consideration in reaching your decision. Your
16 verdict must be based solely on the legally admissible evidence
17 and testimony.

18 Also, do not assume from anything I may have done or
19 said during the trial that I have any opinion concerning any of
20 the issues in this case. Except for the instructions to you on
21 the law, you should disregard anything I may have said during
22 the trial in arriving at your own verdict.

23 In considering the evidence, you are permitted to
24 draw such reasonable inferences from the testimony and exhibits
25 as you feel are justified in the light of common experience.

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1 In other words, you may make deductions and reach conclusions
2 that reason and common sense lead you to draw from the facts
3 which have been established by the evidence.

4 Do not be concerned about whether the evidence is
5 "direct evidence" or "circumstantial evidence." You should
6 consider and weigh all of the evidence that was presented to
7 you.

8 "Direct evidence" is the testimony of one who asserts
9 actual knowledge of a fact, such as an eyewitness.

10 "Circumstantial evidence" is proof of a chain of events and
11 circumstances indicating that something is or is not a fact.

12 The law makes no distinction between the weight to be
13 given to either direct or circumstantial evidence. But the law
14 requires that you, after weighing all the evidence, whether
15 direct or circumstantial, be convinced of the guilt of the
16 defendant beyond a reasonable doubt before you can find him
17 guilty.

18 You have heard evidence of acts of the defendant
19 which may be similar to those charged in the indictment, but
20 which were committed on other occasions. You must not consider
21 any of this evidence in deciding if the defendant committed the
22 acts charged in the indictment. However, you may consider this
23 evidence for other, very limited, purposes.

24 If you find beyond a reasonable doubt from the other
25 evidence in this case that the defendant did commit the acts

1 charged in the indictment, then you may consider evidence of
2 the similar acts allegedly committed on other occasions to
3 determine:

4 Whether the defendant had a state of or intent
5 necessary to commit the crime charged in the indictment;

6 || or

7 Whether the defendant had a motive or the opportunity
8 to commit the acts charged in the indictment;

9 || or

10 Whether the defendant acted according to a plan or in
11 preparation for commission of a crime;

12 or

13 Whether the defendant committed the acts for which he
14 is on trial by accident or mistake.

15 These are limited purposes for which any evidence of
16 other similar acts may be considered.

17 Government's Exhibit 26A through R contain a
18 transcript of the oral conversation which can be heard on the
19 recording. The transcript also purports to identify the
20 speakers engaged in such conversation.

21 I have admitted the transcript for the limited and
22 secondary purpose of aiding you in following the content of the
23 conversation as you listen to the recording, and also to aid
24 you in identifying the speakers.

25 You are specifically instructed that whether the

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1 transcript correctly or incorrectly reflects the content of the
2 conversation or the identity of the speakers is entirely for
3 you to determine based upon your own evaluation of the
4 testimony you have heard concerning the preparation of the
5 transcript, and from your own examination of the transcript in
6 relation to your hearing of the recording itself as the primary
7 evidence of its own contents; and, if you should determine that
8 the transcript is in any respect incorrect or unreliable, you
9 should disregard it to that extent. It is what you hear on the
10 recording that is evidence, not the transcripts.

11 I remind you that it is your job to decide whether
12 the government has proved the guilt of the defendant beyond a
13 reasonable doubt. In doing so, you must consider all of the
14 evidence. This does not mean, however, that you must accept
15 all of the evidence as true or accurate.

16 You are the sole judges of the credibility or
17 "believability" of each witness and the weight to be given each
18 witness' testimony. An important part of your job will be
19 making judgments about the testimony of the witnesses who
20 testified in this case. You should decide whether you believe
21 all, some part, or none of what each person had to say and how
22 important that testimony was. In making that decision, I
23 suggest that you ask yourself some questions: Did the witness
24 impress you as honest? Did the witness have any particular
25 reason not to tell the truth? Did the witness have a personal

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1 interest in the outcome of the case? Did the witness have any
2 relationship with either the government or the defense? Did
3 the witness seem to have a good memory? Did the witness
4 clearly see or hear the things about which he or she testified?
5 Did the witness have the opportunity and ability to understand
6 the questions clearly and answer them directly? Did the
7 witness' testimony differ from the testimony of other
8 witnesses? These are a few of the considerations that will
9 help you determine the accuracy of what each witness said.

10 Your job is to think about the testimony of each
11 witness you have heard and decide how much you believe of what
12 each witness had to say. In making up your mind and reaching a
13 verdict, do not make any decisions simply because there are
14 more witnesses on one side than on the other. Do not reach a
15 conclusion on a particular point just because there were more
16 witnesses testifying for one side on that point. You will
17 always bear in mind that the law never imposes upon a defendant
18 in a criminal case the burden or duty of calling any witnesses
19 or producing any evidence.

20 During the trial you heard the testimony of Brian
21 Nishida, who expressed opinions concerning computer forensics
22 examination. If scientific, technical, or other specialized
23 knowledge might assist the jury in understanding the evidence
24 or in determining a fact in issue, a witness qualified by
25 knowledge, skill, experience, training, or education may

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1 testify and state an opinion concerning such matters.

2 Merely because such a witness has expressed an
3 opinion does not mean, however, that you must accept this
4 opinion. You should judge such testimony like any other
5 testimony. You may accept it or reject it and give it as much
6 weight as you think it deserves, considering the witness'
7 education and experience, the soundness of the reasons given
8 for the opinion, and all other evidence in the case.

9 The testimony of an alleged accomplice, and/or the
10 testimony of one who provides evidence against a defendant as
11 an informer for pay, for immunity from punishment, or for
12 personal advantage or vindication, must always be examined and
13 weighed by the jury with greater care and caution than the
14 testimony of ordinary witnesses. You, the jury, must decide
15 whether the witness' testimony has been affected by the
16 circumstances, by the witnesses' interest in the outcome of the
17 case, by prejudice against the defendant, or by the benefits
18 that the witness has received, either financially or as a
19 result of being immunized from prosecution. You should keep in
20 mind that such testimony is always to be received with caution
21 and weighed with great care.

22 You should never convict any defendant upon the
23 unsupported testimony of such a witness unless you believe that
24 testimony beyond a reasonable doubt.

25 You are here to decide whether the government has

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1 proved beyond a reasonable doubt that the defendant is guilty
2 of the crimes charged. The defendant is not on trial for any
3 act, conduct, or offense not alleged in the indictment.
4 Neither are you called upon to return a verdict as to the guilt
5 of any other person or persons not on trial as a defendant in
6 this case, except as you are otherwise instructed.

7 If the defendant is found guilty, it will be my duty
8 to decide what the punishment will be. You should not be
9 concerned with punishment in any way. It should not enter into
10 your consideration or discussion.

11 You will note that the indictment charges that the
12 offenses were committed on or about specified dates. The
13 government does not have to prove that the crimes were
14 committed on those exact dates, so long as the government
15 proves beyond a reasonable doubt that the defendant committed
16 the crimes on dates reasonably near January 1, 1996, continuing
17 until on or about November 7, 2019; October 24, 2019; and
18 November 7, 2019, the dates stated in the indictment.

19 A separate crime is charged in each count of the
20 indictment. Each count, and the evidence pertaining to it,
21 should be considered separately. The fact that you may find
22 the defendant guilty or not guilty as to one of the crimes
23 charged should not control your verdict as to any other.

24 The indictment contains multiple counts, which read
25 as follows:

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COUNT ONE

That on or about October 24, 2019, in the Western District of Texas, the Defendant,

THOMAS ALAN ARTHUR,

did knowingly produce, distribute, receive, and possess with the intent to distribute, a visual depiction of any kind, including a drawing that depicts a minor engaging in sexually explicit conduct and is obscene, to wit: a drawing of a prepubescent female engaged in the lascivious exhibition of the genitals or pubic area and this visual depiction had been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer.

A violation of Title 18, United States Code, Section 1466A(a)(1), Section 2, and *Pinkerton v. United States* 328 U.S. 640 (1946).

COUNT TWO

That on or about November 7, 2019, in the Western District of Texas, the Defendant,

THOMAS ALAN ARTHUR,

aided and abetted by others, knowingly used an interactive computer service for carriage in interstate and foreign

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1 commerce, an obscene matter, to wit: obscene story 1.

2 A violation of Title 18, United States Code,
3 Section 1462(a), Section 2, and *Pinkerton v. United States*,
4 328 U.S. 640 (1946).

5 **COUNT THREE**

6 That on or about November 7, 2019, in the Western
7 District of Texas, the Defendant,

8 **THOMAS ALAN ARTHUR,**

9 aided and abetted by others, knowingly used an interactive
10 computer service for carriage in interstate and foreign
11 commerce, an obscene matter, to wit: obscene story 2.

12 A violation of Title 18, United States Code,
13 Section 1462(a), Section 2, and *Pinkerton v. United States*,
14 328 U.S. 640 (1946).

15 **COUNT FOUR**

16 That on or about November 7, 2019, in the Western
17 District of Texas, the Defendant,

18 **THOMAS ALAN ARTHUR,**

19 aided and abetted by others, knowingly used an interactive
20 computer service for carriage in interstate and foreign
21 commerce, an obscene matter, to wit: obscene story 3.

22 A violation of Title 18, United States Code,
23 Section 1462(a), Section 2, and *Pinkerton v. United States*,
24 328 U.S. 640 (1946).

25 **COUNT FIVE**

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1 That on or about November 7, 2019, in the Western
2 District of Texas, the Defendant,

3 **THOMAS ALAN ARTHUR,**
4 aided and abetted by others, knowingly used an interactive
5 computer service for carriage in interstate and foreign
6 commerce, an obscene matter, to wit: obscene story 4.

7 A violation of Title 18, United States Code,
8 Section 1462(a), Section 2, and *Pinkerton v. United States*,
9 328 U.S. 640 (1946).

10 **COUNT SIX**

11 That on or about November 7, 2019, in the Western
12 District of Texas, the Defendant,

13 **THOMAS ALAN ARTHUR,**
14 aided and abetted by others, knowingly used an interactive
15 computer service for carriage in interstate and foreign
16 commerce, an obscene matter, to wit: obscene story 5.

17 A violation of Title 18, United States Code,
18 Section 1462(a), Section 2, and *Pinkerton v. United States*,
19 328 U.S. 640 (1946).

20 **COUNT SEVEN**

21 That on or about January 1, 1996, to on or about
22 November 7, 2019, in the Western District of Texas, and
23 elsewhere, the Defendant,

24 **THOMAS ALAN ARTHUR,**
25 aided and abetted by others, was engaged in the business of

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1 selling and transferring obscene matter, and knowingly
2 received and possessed with the intent to distribute obscene
3 stories and drawings of minors engaging in sexually explicit
4 conduct, which was shipped and transported in interstate and
5 foreign commerce.

6 A violation of Title 18, United States Code,
7 Section 1466, Section 2, and *Pinkerton v. United States*,
8 328 U.S. 640 (1946).

9 **COUNT EIGHT**

10 That on or about November 7, 2019, in the Western
11 District of Texas, the Defendant,

12 **THOMAS ALAN ARTHUR,**

13 did knowingly produce, distribute, receive, and possess with
14 the intent to distribute, a visual depiction of any kind,
15 including a drawing that depicts a minor engaging in
16 sexually explicit conduct and is obscene, to wit: a drawing
17 of a prepubescent female performing fellatio on an adult
18 male and this visual depiction had been mailed, or shipped
19 or transported in interstate or foreign commerce by any
20 means, including by computer, or was produced using
21 materials that have been mailed, or that have been shipped
22 or transported in interstate or foreign commerce by any
23 means, including by computer.

24 A violation of Title 18, United States Code,
25 Section 1466A(a)(1), Section 2, and *Pinkerton v. United States*,

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1 328 U.S. 640 (1946).

2 COUNT NINE

3 That on or about November 7, 2019, in the Western
4 District of Texas, the Defendant,

5 **THOMAS ALAN ARTHUR,**

6 did knowingly produce, distribute, receive, and possess with
7 the intent to distribute, a visual depiction of any kind,
8 including a drawing that depicts a minor engaging in
9 sexually explicit conduct and is obscene, to wit: a drawing
10 of prepubescent females performing fellatio on adult penises
11 and this visual depiction had been mailed, or shipped or
12 transported in interstate or foreign commerce by any means,
13 including by computer, or was produced using materials that
14 have been mailed, or that have been shipped or transported
15 in interstate or foreign commerce by any means, including by
16 computer.

17 A violation of Title 18, United States Code,
18 Section 1466A(a)(1), Section 2, and *Pinkerton v. United States*,
19 328 U.S. 640 (1946).

20 Title 18, United States Code, Section 1466A, makes it
21 a crime for anyone to produce, distribute, receive, or possess
22 with intent to distribute, a visual depiction of a minor
23 engaging in sexually explicit conduct.

24 For you to find the defendant guilty of Count One,
25 you must be convinced that the government has proved each of

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1 the following beyond a reasonable doubt:

2 *First:* That the defendant knowingly produced,
3 distributed, received, or possessed with intent to distribute,
4 a visual depiction;

5 *Second:* That the visual depiction is of a minor
6 engaging in sexually explicit conduct;

7 *Third:* That the visual depiction is obscene; and

8 *Fourth:* That any visual depiction involved in the
9 offense had been mailed, or shipped, or transported in
10 interstate or foreign commerce by any means, including by
11 computer, or was produced using materials that were mailed or
12 shipped or transported in interstate or foreign commerce,
13 including by computer.

14 The parties have stipulated that Defendant Thomas
15 Alan Arthur knowingly distributed, received, and possessed with
16 intent to distribute the visual depiction charged in Count One
17 and that the visual depiction charged in Count One had been
18 shipped and transported in interstate and foreign commerce by
19 any means, including by computer, and was produced using
20 materials that had been mailed, and had been shipped and
21 transported in interstate and foreign commerce by any means,
22 including by computer.

23 "Visual depiction" includes undeveloped film and
24 videotape, and data stored on a computer disk or by electronic
25 means which is capable of conversion into a visual image, and

1 also includes any photograph, film, video, picture, digital
2 image or picture, computer image or picture, or computer
3 generated image or picture, whether made or produced by
4 electronic, mechanical, or other means.

5 The term "computer" means an electronic, magnetic,
6 optical, electrochemical, or other high speed data processing
7 device performing logical, arithmetic, or storage functions,
8 and includes any data storage facility or communication
9 facility directly related to or operating in conjunction with
10 such device, but such term does not include an automated
11 typewriter or typesetter, a portable handheld calculator, or
12 other similar device.

13 The term "minor" means any person under the age of
14 eighteen years.

15 Interstate commerce means commerce or travel between
16 one state, territory or possession of the United States and
17 another state, territory or possession of the United States,
18 including the District of Columbia.

19 Foreign commerce means commerce or travel between any
20 part of the United States, including its territorial waters,
21 and any other country, including its territorial waters.

22 Commerce includes travel, trade, transportation, and
23 communication.

24 "Sexually explicit conduct" means actual or simulated
25 sexual intercourse, including genital-genital, oral-genital,

1 anal-genital, or oral-anal, whether between persons of the same
2 or opposite sex; bestiality, masturbation, sadistic or
3 masochistic abuse; or lascivious exhibition of the genitals or
4 pubic area of any person.

5 Be cautioned that not every exposure of the genitals
6 or pubic area constitutes lascivious exhibition. Whether a
7 visual depiction constitutes a lascivious exhibition requires a
8 consideration of the overall content of the material. You may
9 consider such factors as: (1) whether the focal point of the
10 visual depiction is on the child's genitalia or pubic area; (2)
11 whether the setting of the depiction is sexually suggestive,
12 that is, in a place or pose associated with sexual activity;
13 (3) whether the child is depicted in an unnatural pose or in
14 inappropriate attire, considering the age of the child; (4)
15 whether the child is fully or partially nude; (5) whether the
16 visual depiction suggests sexual coyness or a willingness to
17 engage in sexual activity; and (6) whether the depiction is
18 designed to elicit a sexual response in the viewer. This list
19 is not exhaustive and no single factor is dispositive.

20 Freedom of expression has contributed much to the
21 development and well-being of our free society. In the
22 exercise of the fundamental constitutional right to free
23 expression which all of us enjoy, sex may be portrayed, and the
24 subject of sex may be discussed, freely and publicly. Material
25 is not to be condemned merely because it contains passages or

1 sequences that are descriptive of sexual activity. However,
2 the constitutional right to free expression does not extend to
3 that which is obscene.

4 To prove a matter is "obscene," the government must
5 satisfy three tests: (1) that the work appeals predominantly
6 to prurient interest; (2) that it depicts or describes sexual
7 conduct in a patently offensive way; and (3) that the material,
8 taken as a whole, lacks serious literary, artistic, political,
9 or scientific value.

10 An appeal to "prurient" interest is an appeal to a
11 morbid, degrading, and unhealthy interest in sex, as
12 distinguished from an ordinary interest in sex.

13 The first test, therefore, is whether the predominant
14 theme or purpose of the material, when viewed as a whole and
15 not part by part, and when considered in relation to the
16 intended and probable recipients, is an appeal to the prurient
17 interest of an average person in the community as a whole or to
18 the prurient interest of members of a deviant sexual group. In
19 making this decision, you must examine the main or principal
20 focus of the material, when assessed in its entirety and based
21 on its total effect, not on incidental themes or isolated
22 passages or sequences.

23 The second test is whether the material depicts or
24 describes, in a patently offensive way, sexual conduct such as
25 ultimate sexual acts, normal or perverted, actual or simulated;

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1 masturbation; excretory functions; or lewd exhibition of the
2 genitals.

3 These first two tests which I have described are to
4 be decided by you, applying contemporary community standards.
5 This means that you should make the decision in the light of
6 contemporary standards that would be applied by the average
7 person in this community, with an average and normal attitude
8 toward an interest in sex. Contemporary community standards
9 are those accepted in this community as a whole. You must
10 decide whether the material would appeal predominantly to
11 prurient interests and would depict or describe sexual conduct
12 in a patently offensive way when viewed by an average person in
13 this community as a whole, that is, by the community at large
14 or in general. Matter is patently offensive by contemporary
15 community standards if it so exceeds the generally accepted
16 limits of candor in the entire community as to be clearly
17 offensive. You must not judge the material by your own
18 personal standards, if you believe them to be stricter than
19 those generally held, nor should you determine what some groups
20 of people may believe the community ought to accept or refuse
21 to accept. Rather, you must determine the attitude of the
22 community as a whole.

23 However, the prurient-appeal requirement may also be
24 assessed in terms of the sexual interest of a clearly defined
25 deviant sexual group if the material in question was intended

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1 to appeal to the prurient interest of that group, as
2 distinguished from the community in general.

3 If you find that the material meets the first two
4 tests of the obscenity definition, your final decision is
5 whether the material, taken as a whole, lacks serious literary,
6 artistic, political, or scientific value. Unlike the first two
7 tests, this third test is not to be decided on contemporary
8 community standards but rather on the basis of whether a
9 reasonable person, considering the material as a whole, would
10 find that the material lacks serious literary, artistic,
11 political, or scientific value. An item may have serious value
12 in one or more of these areas even if it portrays sexually
13 oriented conduct. It is for you to say whether the material in
14 this case has such value.

15 All three of these tests must be met before the
16 material in question can be found to be obscene. If any one of
17 them is not met, the material would not be obscene within the
18 meaning of the law.

19 **COUNTS TWO, THREE, FOUR, FIVE, AND SIX:**

20 Title 18, United States Code, Section 1462, makes it
21 a crime for anyone to use a common carrier to transmit obscene
22 material in interstate or foreign commerce.

23 For you to find the defendant guilty of Count Two,
24 you must be convinced that the government has proved each of
25 the following beyond a reasonable doubt:

1 *First:* That the defendant knowingly used an
2 interactive computer service to transport Story 1 in interstate
3 or foreign commerce, as charged;

4 *Second:* That the defendant knew, at the time of such
5 transportation, the sexually oriented content of the material;
6 and

7 *Third:* That the material was obscene.

8 For to you find the defendant guilty of Count Three,
9 you must be convinced that the government has proved each of
10 the following beyond a reasonable doubt:

11 *First:* That the defendant knowingly used an
12 interactive computer service to transport Story 2 in interstate
13 or foreign commerce, as charged;

14 *Second:* That the defendant knew, at the time of such
15 transportation, the sexually oriented content of the material;
16 and

17 *Third:* That the material was obscene.

18 For you to find the defendant guilty of Count Four,
19 you must be convinced that the government has proved each of
20 the following beyond a reasonable doubt:

21 *First:* That the defendant knowingly used an
22 interactive computer service to transport Story 3 in interstate
23 or foreign commerce, as charged;

24 *Second:* That the defendant knew, at the time of such
25 transportation, the sexually oriented content of the material;

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1 and

2 *Third:* That the material was obscene.

3 For you to find the defendant guilty of Count Five,
4 you must be convinced that the government has proved each of
5 the following beyond a reasonable doubt:

6 *First:* That the defendant knowingly used an
7 interactive computer service to transport Story 4 in interstate
8 or foreign commerce, as charged;

9 *Second:* That the defendant knew, at the time of such
10 transportation, the sexually oriented content of the material;
11 and

12 *Third:* That the material was obscene.

13 For to you find the defendant guilty of Count Six,
14 you must be convinced that the government has proved each of
15 the following beyond a reasonable doubt:

16 *First:* That the defendant knowingly used an
17 interactive computer service to transport Story 5 in interstate
18 or foreign commerce, as charged;

19 *Second:* That the defendant knew, at the time of such
20 transportation, the sexually oriented content of the material;
21 and

22 *Third:* That the material was obscene.

23 The parties have stipulated that Defendant Thomas
24 Alan Arthur knowingly used an interactive computer service to
25 transport Story 1, Story 2, Story 3, Story 4, and Story 5, as

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1 charged in Counts Two through Six, in interstate and foreign
2 commerce and that he knew, at the time of such transportation,
3 the sexually oriented content of the material.

4 "Interactive computer service" means any information
5 service, system, or access to software provider that provides
6 or enables computer access by multiple users to a computer
7 service, including specifically a service or system that
8 provides access to the Internet and such systems operated or
9 services offered by libraries or educational institutions.

10 One of the specific facts the government must prove
11 is that the defendant knew of the sexually oriented contents of
12 the material that was transported in interstate commerce. The
13 government is not obligated to prove that the defendant knew
14 that such material was legally obscene, only that the content
15 was sexually oriented.

16 The definitions of "foreign commerce," "interstate
17 commerce," "commerce," and "obscene" provided for Count One
18 apply to Counts Two, Three, Four, Five, and Six.

19 **COUNT SEVEN:**

20 Title 18, United States Code, Section 1466, makes it
21 a crime for anyone to engage in the business of selling or
22 transferring Obscene material.

23 For you to find the defendant guilty of Count Seven,
24 you must be convinced that the government has proved each of
25 the following beyond a reasonable doubt:

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1 *First:* That the defendant was engaged in the
2 business of selling, transferring, receiving, or possessing
3 stories or drawings;

4 *Second:* That the defendant knowingly sold or
5 transferred stories or drawings, or knowingly received or
6 possessed stories or drawings with the intent to distribute
7 them;

8 *Third:* That the stories or drawings are obscene; and

9 *Fourth:* That the stories or drawings have been
10 shipped or transported in interstate or foreign commerce.

11 The parties have stipulated that Defendant Thomas
12 Alan Arthur, from June 21, 1998, to November 7, 2019, engaged
13 in the business of producing, selling, and transferring the
14 stories and drawings on the Mr. Double Web site; that he
15 knowingly sold, transferred, and produced the stories and
16 drawings on the Mr. Double Web site with intent to distribute
17 and sell; and that the stories and drawings on the Mr. Double
18 Web site have been shipped and transported in interstate and
19 foreign commerce.

20 To "distribute" something means to deliver or
21 transfer possession of it to someone else, with or without any
22 financial interest in the transaction. Placing the material in
23 a shared folder accessible to other users constitutes
24 distribution, even in the absence of proof that anyone else
25 accessed the files.

1 To "engage in the business" means that the person who
2 produces, sells or transfers or offers to sell or transfer
3 obscene matter devotes time, attention, or labor to such
4 activities, as a regular course of trade or business, with the
5 objective of earning a profit, although it is not necessary
6 that the person make a profit or that the production, selling
7 or transferring or offering to sell or transfer such material
8 be the person's sole or principal business or source of income.

9 The definition of "foreign commerce," "interstate
10 commerce," and "commerce" and "obscene" provided for Count One
11 apply to Count Seven.

12 **COUNTS EIGHT AND NINE:**

13 Title 18, United States Code, Section 1466A, makes it
14 a crime for anyone to produce, distribute, receive, or possess
15 with intent to distribute, a visual depiction of a minor
16 engaging in sexually explicit conduct.

17 For you to find the defendant guilty of Count Eight,
18 you must be convinced that the government has proved each of
19 the following beyond a reasonable doubt:

20 *First:* That the defendant knowingly produced,
21 distributed, received, or possessed with intent to distribute,
22 a visual depiction;

23 *Second:* That the visual depiction is of a minor
24 engaging in sexually explicit conduct;

25 *Third:* That the visual depiction is obscene; and

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1 *Fourth:* That any visual depiction involved in the
2 offense had been mailed, or shipped, or transported in
3 interstate or foreign commerce by any means, including by
4 computer, or was produced using materials that were mailed or
5 shipped or transported in interstate or foreign commerce,
6 including by computer.

7 For you to find the defendant guilty of Count Nine,
8 you must be convinced that the government has proved each of
9 the following beyond a reasonable doubt:

10 *First:* That the defendant knowingly produced,
11 distributed, received, or possessed with intent to distribute,
12 a visual depiction;

13 *Second:* That the visual depiction is of a minor
14 engaging in sexually explicit conduct;

15 *Third:* That the visual depiction is obscene; and

16 *Fourth:* That any visual depiction involved in the
17 offense had been mailed, or shipped, or transported in
18 interstate or foreign commerce by any means, including by
19 computer, or was produced using materials that were mailed or
20 shipped or transported in interstate or foreign commerce,
21 including by computer.

22 The parties have stipulated that Defendant Thomas
23 Alan Arthur knowingly distributed, received, and possessed with
24 intent to distribute the visual depictions charged in
25 Counts Eight and Nine; that he knew, at the time of such

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1 production, distribution, receipt, and possession with intent
2 to distribute, the sexually oriented nature of the visual
3 depictions charged in Counts Eight and Nine; and that he knew
4 that the visual depictions charged in Counts Eight and Nine had
5 been shipped and transported in interstate and foreign commerce
6 by any means, including by computer, and were produced using
7 materials that had been mailed, and had been shipped and
8 transported in interstate and foreign commerce by any means,
9 including by computer.

10 The definitions of "interstate commerce," "foreign
11 commerce," "commerce," "sexually explicit conduct," "computer,"
12 "minor," "visual depiction," and "obscene" provided for Count
13 One apply to Counts Eight and Nine.

14 The guilt of a defendant in a criminal case may be
15 established without proof that the defendant personally did
16 every act constituting the offense alleged. The law recognizes
17 that, ordinarily, anything a person can do for himself may also
18 be accomplished by him through the direction of another person
19 as his or her agent, or by acting in concert with, or under the
20 direction of another person or persons in a joint effort or
21 enterprise.

22 If another person is acting under the direction of
23 the defendant or if the defendant joins another person and
24 performs acts with the intent to commit a crime, then the law
25 holds the defendant responsible for the acts and conduct of

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1 such other persons just as though the defendant had committed
2 the acts or engaged in such conduct.

3 Before the defendant may be held criminally
4 responsible for the acts of others, it is necessary that the
5 accused deliberately associate himself in some way with the
6 crime and participate in it with the intent to bring about the
7 crime.

8 Mere presence at the scene of a crime and knowledge
9 that a crime is being committed are not sufficient to establish
10 that a defendant either directed or aided and abetted the crime
11 unless you find beyond a reasonable doubt that the defendant
12 was a participant and not merely a knowing spectator.

13 In other words, you may not find the defendant guilty
14 unless you find beyond a reasonable doubt that every element of
15 the offense as defined in these instructions was committed by
16 some person or persons, and that the defendant voluntarily
17 participated in its commission with the intent to violate the
18 law.

19 For you to find the defendant guilty of Count Two,
20 you must be convinced that the government has proved each of
21 the following beyond a reasonable doubt:

22 *First:* That the offense of interstate transportation
23 of obscene material was committed by some person;

24 *Second:* That the defendant associated with the
25 criminal venture;

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1 *Third:* That the defendant purposefully participated
2 in the criminal venture; and

3 *Fourth:* That the defendant sought by action to make
4 that venture successful.

5 For you to find the defendant guilty of Count Three,
6 you must be convinced that the government has proved each of
7 the following beyond a reasonable doubt:

8 *First:* That the offense of interstate transportation
9 of obscene material was committed by some person;

10 *Second:* That the defendant associated with the
11 criminal venture;

12 *Third:* That the defendant purposefully participated
13 in the criminal venture; and

14 *Fourth:* That the defendant sought by action to make
15 that venture successful.

16 For you to find the defendant guilty of Count Four,
17 you must be convinced that the government has proved each of
18 the following beyond a reasonable doubt:

19 *First:* That the offense of interstate transportation
20 of obscene material was committed by some person;

21 *Second:* That the defendant associated with the
22 criminal venture;

23 *Third:* That the defendant purposefully participated
24 in the criminal venture; and

25 *Fourth:* That the defendant sought by action to make

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1 that venture successful.

2 For you to find the defendant guilty of Count Five,
3 you must be convinced that the government has proved each of
4 the following beyond a reasonable doubt:

5 *First:* That the offense of interstate transportation
6 of obscene material was committed by some person;

7 *Second:* That the defendant associated with the
8 criminal venture;

9 *Third:* That the defendant purposefully participated
10 in the criminal venture; and

11 *Fourth:* That the defendant sought by action to make
12 that venture successful.

13 For you to find the defendant guilty of Count Six,
14 you must be convinced that the government has proved each of
15 the following beyond a reasonable doubt:

16 *First:* That the offense of interstate transportation
17 of obscene material was committed by some person;

18 *Second:* That the defendant associated with the
19 criminal venture;

20 *Third:* That the defendant purposefully participated
21 in the criminal venture; and

22 *Fourth:* That the defendant sought by action to make
23 that venture successful.

24 For you to find the defendant guilty of Count Seven,
25 you must be convinced that the government has proved each of

1 the following beyond a reasonable doubt:

2 *First:* That the offense of selling or transferring
3 obscene material was committed by some person;

4 *Second:* That the defendant associated with the
5 criminal venture;

6 *Third:* That the defendant purposefully participated
7 in the criminal venture; and

8 *Fourth:* That the defendant sought by action to make
9 that venture successful.

10 "To associate with the criminal venture" means that
11 the defendant shared the criminal intent of the principal.
12 This element cannot be established if the defendant had no
13 knowledge of the principal's criminal venture.

14 "Possession," as that term is used in these
15 instructions, may be one of two kinds: actual possession or
16 constructive possession.

17 A person who knowingly has direct physical control
18 over a thing, at a given time, is in actual possession of it.

19 A person who, although not in actual possession,
20 knowingly has both the power and the intention, at a given
21 time, to exercise dominion or control over a thing, either
22 directly or through another person or persons, is in
23 constructive possession of it.

24 Possession may be sole or joint. If one person alone
25 has actual or constructive possession of a thing, possession is

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1 sole. If two or more persons share actual or constructive
2 possession of a thing, possession is joint.

3 You may find that the element of possession is
4 present if you find beyond a reasonable doubt that the
5 defendant had actual or constructive possession, either alone
6 or jointly with others.

7 The word "knowingly," as that term has been used from
8 time to time in these instructions, means that the act was done
9 voluntarily and intentionally, not because of mistake or
10 accident.

11 It is reasonable to infer that a person ordinarily
12 intends the natural and probable consequences of his knowing
13 acts. The jury may draw the inference that the accused
14 intended all of the consequences which one standing in like
15 circumstances and possessing like knowledge should reasonably
16 have expected to result from any intentional act or conscious
17 omission. Any such inference drawn is entitled to be
18 considered by the jury in determining whether or not the
19 government has proved beyond a reasonable doubt that the
20 defendant possessed the required criminal intent.

21 To reach a verdict, whether it is guilty or not
22 guilty, all of you must agree. Your verdict must be unanimous
23 on each count of the indictment. Your deliberations will be
24 secret. You will never have to explain your verdict to anyone.

25 It is your duty to consult with one another and to

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1 deliberate in an effort to reach agreement if you can do so.
2 Each of you must decide the case for yourself, but only after
3 an impartial consideration of the evidence with your fellow
4 jurors. During your deliberations, do not hesitate to
5 reexamine your own opinions and change your mind if convinced
6 that you were wrong. But do not give up your honest beliefs as
7 to the weight or effect of the evidence solely because of the
8 opinion of your fellow jurors, or for the mere purpose of
9 returning a verdict.

10 Remember at all times, you are the judges of the
11 facts. Your duty is to decide whether the government has
12 proved the defendant guilty beyond a reasonable doubt.

13 When you go to the jury room, the first thing you
14 should do is select one of your number as your foreperson, who
15 will help to guide your deliberations and will speak for you
16 here in the courtroom.

17 A verdict form has been prepared for your
18 convenience. The foreperson will write the unanimous answer of
19 the jury in the space provided for each count of the
20 indictment, either guilty or not guilty. At the conclusion of
21 your deliberations, the foreperson should date and sign the
22 verdict.

23 We're going to send back one verdict form with you.
24 Your copies should not have a copy of the verdict form. We'll
25 send that in. It's actually got three pages to it, and it

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1 says:

2 VERDICT FORM

3 Answer "not guilty" or "guilty."

4 COUNT ONE

5 We the Jury find that Defendant **THOMAS ALAN ARTHUR**
6 is -- and there is a blank, underneath it says "Not Guilty" or
7 "Guilty," and the foreperson will write that in, either not
8 guilty or guilty, whichever the vote is unanimous for -- of the
9 offense charged in Count One of the indictment.

10 That's done for all nine counts.

11 As to Count Seven you'll notice there is a Special
12 Interrogatory for that count. And it says: If you find the
13 Defendant, **THOMAS ALAN ARTHUR**, guilty of the crime charged in
14 Count Seven of the Indictment, please list the title of the
15 stories and/or drawings you find obscene in the following blank
16 page.

17 And the blank page has: Answer to Special
18 Interrogatory for Count Seven.

19 If you find the defendant not guilty of that count,
20 you'll have nothing. If you find him guilty of Count Seven,
21 you'll list one or more stories or -- and/or drawings you find
22 to be obscene.

23 At this time I'm going to recognize Mr. Berry, who is
24 going to start us off. And I told you yesterday the government
25 has -- by virtue of having the burden of proof is able to open

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1 the closing arguments. He'll also be able to split his time
2 and rebut the defense, but he gets the same amount of time as
3 the defense as well.

4 Mr. Berry, you may proceed whenever you're ready,
5 sir.

6 MR. BERRY: Thank you, Your Honor.

7 **CLOSING ARGUMENT BY MR. BERRY**

8 MR. BERRY: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. BERRY: Mr. Bennett, Mr. Haygood, Mr. Arthur.

11 Ladies and gentlemen, when we started this trial, we
12 told you that we're going to present some evidence and then --
13 and we've done that. We were able to get that all packed in
14 yesterday. Today my charge is to walk you through the evidence
15 as officially as I can in the allotted time I have to explain
16 to you how the different exhibits and testimony fit in with the
17 nine counts that he's been charged with in this indictment.

18 What's important to understand is the way the
19 indictment is broken down. So Counts One, Eight, and Nine
20 pertain to drawings. Okay. Those drawings are going to be
21 found in Exhibits 10A, 11A, and 12A. Those are the drawings
22 that you've seen during this trial, and they relate to those
23 three counts.

24 Counts Two through Six are the story counts, okay?
25 We have three counts on the drawings, One, Eight, and Nine;

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1 five counts on stories, Counts Two through Sixth.

2 The exhibits for Counts Two through Sixth
3 specifically are 5A, 6A, 7A, 8A, and 9A. Those are the
4 individual stories that we passed around that you each read
5 yesterday in full.

6 And then Count Seven is its own thing. And that is
7 what we call the business count charging him with engaging in a
8 business of transporting these types of obscene material
9 drawings and stories. So the business count kind of imports a
10 lot of the other evidence, and we will talk about those
11 exhibits as well.

12 A really important exhibit to keep in mind is
13 Exhibit 34. We didn't spend any time with it yesterday, but it
14 will be there with you, and that is what's called the
15 Stipulations. Judge Counts was reading the instructions to
16 you. He would read a portion of the instruction and then you
17 would hear him say: The parties have stipulated X, which means
18 that the parties have agreed on certain elements of the
19 offense. So in the instructions when it says the Explanation
20 of Counts, and it says first element, second element, third
21 element, fourth element, and then you'll see right after that
22 the parties have stipulated to certain things.

23 So I'm going to simplify things for you, and I'm
24 going to explain how that works right now. Many of those
25 elements that the Judge just read do not require a great deal

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1 of deliberation by you guys because the parties have stipulated
2 to it. We put on evidence in addition to those stipulations
3 that supports it and confirms that, but there is a lot that you
4 don't have to worry about such as were these things transported
5 in interstate or foreign commerce. You heard testimony about
6 it. Server in the Netherlands. It was on Internet. People
7 all over the world, people all over the country, but the
8 parties have stipulated that this stuff moved in interstate
9 commerce.

10 So what is the core issues -- what are the core
11 issues that you really have to focus on in your deliberations?
12 And there are the primary -- the primary issues of dispute come
13 back to Count One. We don't agree whether it's sexually
14 oriented. The Count One is the drawing in 10A. Was that
15 sexually oriented in Count One?

16 The other thing we don't necessarily agree on is
17 Counts One, Eight, and Nine, the drawings. Do those depict
18 minors? A minor is defined in your instruction as the Court
19 said as someone under the age of 18. It doesn't have to be
20 someone under the age of 12. It doesn't have to be under the
21 age of 15 or under the age 8. Under the age of 18, that's a
22 minor. So when you look at those drawings, you decide for
23 yourself whether you believe that they are under the age of 18.

24 And then with regards to all of the counts, there is
25 the question of whether it is, in fact, obscene; and that is

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1 the core dispute and question you guys are going to have to
2 wrestle with.

3 So with regards to Counts Eight and Nine, there is
4 not dispute about whether this is sexually oriented. The
5 parties agreed. The defendant concedes that is sexually
6 oriented. Okay. That's 11A and 12A.

7 But with regards to Count One, this is a dispute.
8 You guys have to decide is this image sexually oriented? I
9 submit to you that there is plenty of evidence for you to look
10 at that image and determine it is sexually oriented, not the
11 least of which are the words surrounding it, the context which
12 is talking about little girls having sex, ten year old, fifth
13 grade, small titty mounds, things like that.

14 Well, look at your instructions. And I apologize
15 that the instruction I was working from last night were
16 numbered slightly differently than they are now. So we need to
17 verify. So it does start on 15 but technically you need to be
18 looking at 16 in your instructions for this part of it. And
19 this is what we refer to the factors that you can consider,
20 that are broken out in six factors.

21 And it says you can determine that this is sexually
22 oriented if you say it is a lascivious exhibition of the
23 genitals. Well, what is a lascivious exhibition of the
24 genitals? What the instructions tell you is to look at a few
25 things to decide whether that is. What is the focal point of

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1 the -- what is the focal point of the picture, right? What are
2 we talking about?

3 So you can see the center of the picture that you
4 could argue that is the focal point, which is, of course, the
5 genitals and the pubic area, okay?

6 Is it in a sexually suggestive pose? She is laid on
7 her back spread eagle with a finger in her pubic area.

8 Is it fully nude or partially nude is what it says in
9 the instructions. Here, clearly fully nude.

10 Does it appear to have a willingness to engage in
11 sexual activity? The spread of the legs is intended to do
12 that.

13 And also, is it designed to elicit a sexual response
14 in the viewer? That doesn't mean that you want to have sex
15 with her. Is it designed to have a sexual response in the
16 viewer that's intended to be looking at that? And the answer
17 to that is clearly yes.

18 Is it a minor? There are a few things that you can
19 look at. The defense spent some time on trying to decide
20 whether this was a minor yesterday. But I think Special
21 Agent Ewan testified and said, You have to look at some context
22 clues, right? Where is the drawing found? First of all, it's
23 found on a Web site dedicated to talking about sex with
24 children. So is this likely to be a 20-year-old woman on here?
25 And the answer is no.

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1 Also, look at just the size of the child -- of the
2 person in there, and then look at the context in which it was
3 placed on that web page. Little girls having sex.
4 10-year-old, fifth grade. Mere slit between her legs. Small
5 titty mounds. These are all context clues to tell you that
6 this is a child.

7 Another context clue that I think is important to
8 think about is look at her hand. Not the one in the pubic
9 area, the one that nobody is paying attention to up here. That
10 child is in distress. She doesn't want to be looked at that
11 way, and that is what these people want to view. They like to
12 see that in distress.

13 What about Counts Eight and Nine? Are they minors?
14 Inexplicably that's in dispute between the defense and the
15 prosecution in this case.

16 They spent time talking about breast development and
17 pubic hair, pubic area. Well, you can clearly see both of
18 these have obvious signs of being a child. I don't think
19 that's something you're going to have to wrestle hard with.
20 They're clearly minors.

21 More dispute issues. So going back to the dispute
22 issues. So Count One, was it sexually oriented? The girl
23 laying on her back with her finger in her pubic area. Yes,
24 sexually oriented.

25 Counts One, Eight, and Nine, are they minors?

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1 Absolutely. I don't think that you're going to struggle with
2 that.

3 So then we go to what about all the stories and
4 drawings in terms of, Okay. They're sexually oriented. It's a
5 minor, whatever; but does it fit the standard, the definition
6 of obscene? And obscene is defined in three parts, and you
7 heard Mr. Haygood reference it in his opening statement. We
8 will talk about those factors there as well.

9 So there's three of them. It is prurient interests,
10 which is an obnoxious legal word that's defined in your
11 instructions that explains what it is. We'll talk about that
12 in just a second. Two is, is it patently offensive? And then,
13 three, does it lack serious -- and then I just have an acronym,
14 serious literary, artistic, political, or scientific value,
15 okay?

16 So let's go through them. Prurient interest is
17 defined in the instruction as an appeal to morbid, degrading,
18 of unhealthy interest in sex. But it's also defined as: Is it
19 intended to appeal to the members of a deviant sexual group as
20 opposed to just the average person in this community?

21 So the defense spent time talking about we had to
22 agree to come into this Web site and you had to pay for a
23 membership and you could only see so much. Well, all that
24 actually goes toward the idea that this is a group of
25 individuals who was devoted to one thing and one thing only,

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1 and that was their interest in sex with children. That is a
2 clearly defined deviant sexual group. And that's what this is
3 intended to appeal to, each of these stories and drawings was
4 aimed at that group, which is why it is submitted to the
5 defendant so that he could post it on his Web site.

6 So when we talk about those factors, what does it
7 look like to be a member of a deviant sexual group? One of the
8 authors that you saw -- read one of their stories, Mr. Arthur,
9 the defendant himself, e-mailed that author and say, I must say
10 you have a fabulous knack for a compelling story title. I have
11 told authors from time to time asking me how to improve their
12 stories and page views. It's all in the title. Give a reader
13 a choice between reading a story called "Out on the town" and
14 "I love sucking daddy's cock every night," guess which story
15 will get twice the readers?

16 Yeah, you know already. Great work. This is a group
17 that was designed -- that was aimed at engaged in deviant
18 sexual activity with children. That is a deviant sexual group.
19 That's what all the stuff was geared towards.

20 Another example of that is he's talking to the
21 authors as a collective, in a group e-mail to the authors
22 saying, Hey, Visa is demanding that I remove certain words like
23 bestiality and preteen and pedo, like pedophile. And if we
24 don't do that, then they're not going to let us run through
25 Visa, and that's going to affect payment, and I'm not going to

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1 be able to pay authors and that sort of thing.

2 So he's talking to the authors. He's talking to the
3 deviant sexual group saying big company doesn't like what we're
4 doing because we're a deviant sexual group, but I'm not
5 changing.

6 Another e-mail from the defendant. He's writing to
7 an individual author and he says to bring -- you see the
8 exhibit stickers. You can go back and see these, the exhibit
9 sticker on the bottom, if that is something that you want to go
10 back and look at, that's there in the corner for you to take a
11 note about.

12 To bring you up to date on the site's history, we've
13 been kicked off of every service from credit card processors to
14 web hosting providers to search engine giants such as Google.

15 So he's talking about how all the big companies, once
16 they became familiar with his Web site, they said, We don't
17 want anything to do with that. Why? Because they're a deviant
18 sexual group.

19 Similarly, Exhibit 29G. My pleasure. Really, this
20 is what I do all day. I'm internally grateful that I work with
21 porn all day and chose not to become a corporate systems
22 analyst in the '90s.

23 This is, again, an e-mail from the defendant. And
24 he's talking about how his poor wife has to put up with him and
25 he chases her around the house with a beer and a hard-on

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1 telling her how he's bombarded with porn, porn, and more porn
2 from the second he wakes up until the end of his day. Why?
3 Because he's exclusively focused on this deviant sexual group
4 that's engaged in talking about sexual abuse of children.

5 Another example of it. He's writing a specific
6 author and he's really, really impressed with the author's
7 work. And what is it he's impressed with? He says he had to
8 stop formatting the story before he posted it because he just
9 couldn't help himself. He had to read the whole thing, and he
10 just really loved that author's descriptions about little pedo
11 nipples and cum covered preteen. That is evidence of a deviant
12 sexual group. These stories appeal to that type of group.

13 And then another one where he is talking about how he
14 is writing to an author. He talks about, I tried my hot
15 14-year-old cousin but gave up after years of trying. Well, I
16 gave up when she became over the hill, 17. That, again, is
17 evidence of him being part of a deviant sexual group that these
18 stories are designed to appeal to.

19 Then there were the forum chats which you'll find in
20 Exhibit 31 with subletters A through something. This one is
21 31B. And this is a posting by Mr. Double himself, and the name
22 of the particular topic that day in Mr. Double's taboo teen
23 incest forum was: I saw the hottest little honey today. And
24 he's talking about how he was at the 7-Eleven buying
25 cigarettes, and this 11- to 12-year-old girl came up to talk to

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1 him and tells him he should stop smoking, and all he could do
2 was concentrate on her breast/chest area, what he referred to
3 as walnuts. Walnuts, walnuts, walnuts, small taste, little
4 nibble of her nubbins. I swear, just a little taste.

5 This is Exhibit 31B that you can examine as well.
6 This is him talking to other people on that group. This is the
7 deviant sexual group that these stories were designed to appeal
8 to.

9 And then you also see that he says on the post when
10 they ask -- one of the forum topics was, you know, what's your
11 pen name? And why is it -- where does it come from? And he
12 posts himself on there, and he tells you that his pen name was
13 Que, Spanish for what. And then he goes on to explain where
14 that name comes from. That shows that he is an author, which
15 you heard Sandra Arthur testify that he was, in fact, an author
16 a couple of times, and you will see those stories in 35AA and
17 35BB.

18 Another example of it being a deviant sexual group is
19 the forum topic: Pedophilia or incest fantasies, would you
20 change if you could? And his answer is: I will never stop
21 fantasizing, reminiscing, or thinking back to the experience
22 that I had in my younger years. And this is on the teen incest
23 forum that he hosts on Mr. Double Web site. That, again, is
24 evidence of a deviant sexual group that these stories are
25 designed to appeal to.

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1 So then the next factor on the test, whether it's
2 obscene. So we've done deviant sexual group, which is part of
3 the prurient interest issue. Now we're going to go on to
4 patently offensive. So patently offensive, again, I have it as
5 16. There is a correction now. I think patently offensive is
6 now on 17, it looks like. Yes, 17.

7 And that talks about, well, what is it to be patently
8 offensive. And it says: The second test is whether the
9 material depicts or describes, in a patently offensive way,
10 sexual conduct such as ultimate sexual acts, normal or
11 perverted, actual or stimulated; masturbation; excretory
12 functions; or lewd exhibition of genitals.

13 Excretory functions, of course, is a really big word
14 for something really unpleasant and disgusting, which is
15 anything to do with bowel movement, urination, what's referred
16 to as water sports or scat in the story codes. And you
17 certainly read stories that had some of that information in
18 there as well.

19 Patently offensive continuing on, it talks about --
20 yes, 17. ...so exceeds the generally accepted limits of candor
21 in the entire community...

22 You, the jury, must decide -- determine the attitude
23 of the community as a whole. Those are quotes from the
24 instructions, and I believe that's on 17 right now.

25 Now, that takes us to serious value, which is where

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1 this really is going to boil down to, is do these stories and
2 drawings lack serious literary, artistic, political, and
3 scientific value. And the instructions tell you now on
4 Page 18, it says -- at the bottom of the first paragraph on 18,
5 it says: "It is for you to say whether the material in this
6 case has such value." That's what you're here for. You are
7 here to decide whether this material has such value.

8 In terms of whether it lacks serious value, and I'm
9 just going to say "value" as a shorthand, but I'm referring to
10 all literary, artistic, political, and scientific value.

11 THE COURT: Mr. Berry, that's 18 minutes.

12 MR. BERRY: That is 18 minutes.

13 THE COURT: Yes, sir.

14 MR. BERRY: I'm going to go over a little bit into my
15 rebuttal time.

16 So what is the serious value? The story codes is a
17 place to start. You can't search on this Web site for
18 metaphors, stories with metaphors, similes, or allegories, or
19 satire. What can you search for? You can search for adult men
20 having sex with little girls and toddlers like this, the story
21 code says.

22 And I want you to go look at Exhibit 5A. You've read
23 them all. 5A, 6A, 7A, 8A, 9A, you read them all word for word
24 sitting here. But you saw that stuff in there. And I'm going
25 to go through this a little bit more quickly. But baby's

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1 clubby little legs. Stretched open cunt. Purple with
2 bruising. What is the value in this type of story? None.

3 Look at this demonstrative here of this particular
4 story. These are the words that are most prominent in the
5 story other than like "and" and "the" and prepositions. Those
6 are the core of the story. What is the value of the story? It
7 lacks any serious value.

8 The same thing with Count Three in that story. When
9 you search for that, if you were looking for this type of
10 story, you're searching for an adult with a prepubescent
11 female, dad, daughter, baby, masturbation, water sports, which
12 is excretory functions. You're not searching for metaphor,
13 simile, allegory, anything like that.

14 And then you see the type of language that's used in
15 there. Baby's cunt, warm semen, diaper, splutter, girl's
16 nostrils, how sweet it tasted, warm urine erupted from her
17 little cunt. What is the value? There is no serious value to
18 any of these stories, ladies and gentlemen. And you've read
19 them all, and I'm not going to belabor this.

20 Count Five, I rolled Amy's lifeless body. He's
21 talking about the murder of children, and then having sex with
22 them. I drove a nail through her palm. The preschool girl
23 wailed. Torn up dead cunt. Made her eat it. What is the
24 serious literary or artistic value here, ladies and gentlemen?
25 Nothing.

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1 Covered her head in clear plastic so I could watch
2 her die with my cock in her ass. Little 18-month-old girl,
3 rapes her. Thrusts his cock through the diaphragm. Tiny
4 little heartbeat at 200 beats per minute, and she dies.

5 Story talking about wringing out the little piece of
6 fuck me to get every drop. What is the serious value here?
7 None. There is no serious value to any of these.

8 The Baby Mangler, the same thing. Fuck the life out
9 of the little girl. Dick sloshing through baby intestines.
10 There is no serious value to any of this.

11 Same with this drawing. What's the serious artistic
12 value here? None. Same with this drawing. None.

13 Engaging in the business, that's pretty clearly
14 established that this was a business. There is not a whole lot
15 of dispute about that. There is plenty of exhibits, 29 -- 29J,
16 29K. The only real element in dispute is again whether the
17 stories or drawings are obscene, and I think that that is
18 especially established as well.

19 So Count Eight has -- it says Count Eight, but it
20 should actually be Count Seven. So that's a mistake on my part
21 there. So Count Seven is the business count, and it has the
22 special interrogatory that the Judge was just referencing. On
23 all the other counts, you're just going to answer guilty or not
24 guilty. When you get to Count Seven, you're going to get to
25 guilty or not guilty. If you say guilty that there was a

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1 business they were engaging in, it then asks you: Please go to
2 the next page and list the stories or drawings that you find to
3 be obscene. There is not a specific number that you have to
4 list. The easy way I think to do this would be to say Counts
5 One through Six, Eight, and Nine, the stories and drawings in
6 those counts, you would list those, say, yes, those are obscene
7 and we put those in that category.

8 You could also list it by Exhibit 5A, 6A, 7A, 8A, 9A,
9 10A, 11A, and 12A. And there is also Exhibit 35, which is a
10 bunch of subexhibits, 35A through II, which is a whole 'nother
11 set of stories. And that includes two stories by the defendant
12 which are specifically 35AA and 35BB. I would submit to you
13 that you list those things on that second page if you find him
14 guilty of the business count.

15 Finally, ladies and gentlemen, we ask that you find
16 the defendant guilty on all counts.

17 THE COURT: Thank you, Mr. Berry.

18 Mr. Bennett.

19 **CLOSING ARGUMENT BY MR. BENNETT**

20 MR. BENNETT: Thank you, Your Honor. I would ask for
21 a two-minute warning instead of the three-minute warning
22 instead.

23 THE COURT: Yes, sir, of course.

24 MR. BENNETT: Thank you, Your Honor.

25 May it please the Court.

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1 THE COURT: Yes, sir.

2 MR. BENNETT: Opposing counsel, Lane, agents,
3 Mr. Arthur, ladies and gentlemen of the jury.

4 What if? What if these works keep a deviant person
5 from harming a child? What if? Would that be scientific
6 value? If looking at these works and masturbating to these
7 works help keep sick, deviant people from harming children?

8 We didn't put on any evidence because we don't have
9 to, and you'll see that in the jury charge. I'm going to go
10 through some parts of the jury charge with you. But because we
11 didn't put on any evidence, I want to go through -- I want to
12 talk about the holes in the evidence, about what the
13 government, which has the burden of proof throughout, and,
14 again, the jury charge says this, that the burden never shifts
15 to the defendant. We don't have the job of proving anything to
16 you. We don't have a job of producing any evidence.

17 The government has the job of proving beyond a
18 reasonable doubt that these works are obscene. And my
19 colleague Mr. Berry is correct. What we're here fighting about
20 is whether these were obscene.

21 We have the stipulation which is -- which there is
22 something else that was not agreed to in the stipulation. The
23 stipulation was entered -- was written and entered before the
24 trial began. In light of the evidence at the trial, the
25 Government's Exhibit 10, the sketch, it does reflect sexual

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1 conduct. We're not contesting that. What we're contesting is
2 serious literary, artistic, and scientific value.

3 So let's look at the jury charge together, please.
4 And if you follow the law, you'll see that it requires
5 acquittal. The last thing that I would do is ask that you not
6 follow the law because I believe that the jury charge here,
7 which is the law that you have to follow, requires that you
8 acquit Mr. Arthur.

9 Starting on Page 1 about three quarters of the way
10 down, it says: It is your sworn duty to follow all of the
11 rules of law as I explain them to you. And sworn duty, that
12 was the oath that you took at the beginning when you were sworn
13 in as jurors. And we know that you're going to follow the
14 oath. So I don't need to spend a lot of time admonishing you
15 that this is the law that you have to follow.

16 On Page 2, the instructions talk about the
17 presumption of innocence. The defendant begins with a clean
18 slate. The law does not require the defendant to prove his
19 innocence or produce any evidence at all and no inference may
20 be drawn from his election not to testify.

21 You don't and you cannot and if somebody said, Well,
22 I would have testified if he were if I thought these had value,
23 you can't do that. That's not a consideration that you can
24 consider. The government has the burden. And if it fails to
25 prove the case beyond a reasonable doubt, you have to acquit

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1 Mr. Arthur.

2 Then in the next paragraph, the Judge's instructions
3 talk about the reasonable doubt. A reasonable doubt is a doubt
4 based upon reason and common sense after careful and impartial
5 consideration of all the evidence in the case. Proof beyond a
6 reasonable doubt, therefore, is proof of such a convincing
7 character that you would be willing to rely and act upon it
8 without hesitation in making the most important decisions of
9 your own affairs.

10 I like to use the example of proposing to your
11 partner. You're thinking about marriage, most important of
12 your own affairs. What might make you hesitate in doing that?
13 Well, certainly a doubt about whether your partner actually
14 loved you or a doubt about whether your partner was going to
15 stick with you. Is she going to stick with me? Does she
16 really love me?

17 And what would make you hesitate in that decision?
18 Not just the belief that your partner won't stick with you or
19 doesn't really love you, but also a question, right, an open
20 question. If you're thinking about proposing to your
21 girlfriend and you wonder, Well, does she really? Is it real?
22 You would hesitate, and you would want to answer that question
23 confidently before you proceeded forward in this most important
24 of your own affairs.

25 That's what we're dealing with here. We are not

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1 talking about, I can show you that this stuff has serious
2 scientific value because I don't have to. All I have to do is
3 show you that there is a reasonable doubt about that, that
4 reasonable minds might differ. And that reasonable doubt is
5 this: What if viewing these works keeps these deviant people
6 from harming children?

7 Moving on to Page 7 of the jury charge. Page 7 says
8 you're here to decide whether the government has proven beyond
9 a reasonable doubt -- this is at the bottom -- that the
10 defendant is guilty of the crimes charged. He's not on trial
11 for any act, conduct, or offense not alleged in the indictment.

12 So this is -- the whole jury charge is the
13 culmination of thousands of years in Western culture from Moses
14 to the United States Supreme Court, right?

15 This is how our society has developed, and the beauty
16 of it is -- I don't believe that you have any fond feelings
17 toward Thomas Arthur after the evidence in this case. I
18 believe that it would be reasonable, based on what you heard,
19 for you to despise Thomas Arthur as a person, as a human being.

20 But the beauty of the system is that we give even the
21 deplorables, even the people that we don't care for, we give
22 them all the benefit of the rules. We don't throw anybody
23 away. We look at the instructions and we follow the
24 instructions.

25 He's not on trial for anything but what he's on trial

1 for. And the way you decide whether he is guilty of those
2 things is you decide whether the government has proven beyond a
3 reasonable doubt, that is, with you no longer having any
4 questions that make you hesitate.

5 All of the questions being answered is to whether the
6 government has proven beyond a reasonable doubt that he
7 committed these particular crimes.

8 And each of the counts then beginning on Page 14
9 talks about that same thing. It says: ...you must be
10 convinced that the government has proved each of the following
11 beyond a reasonable doubt; third, that the visual depiction is
12 obscene. Every count says the same thing. You must be
13 convinced that the government has proved beyond a reasonable
14 doubt that the material is obscene, that the material is
15 obscene, that the material is obscene. You have to believe
16 that the government has proven it beyond a reasonable doubt,
17 has answered all of your questions.

18 Mr. Berry is an excellent lawyer. I am outlawyered
19 here. He's going to get up here and he's going to have
20 questions for you. He's going to have arguments for you. I
21 can't get up and answer them just because of the way the system
22 works. He's got the burden of proof. He gets to talk last. I
23 don't get to respond.

24 And I know -- I know that it is a difficult, painful
25 thing to do, to speak for someone who is despised, but you have

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1 to speak for the rules and you have to speak for that rule that
2 they have to prove the case beyond a reasonable doubt. It's
3 their burden.

4 So when Mr. Berry has his questions or his arguments
5 and I'm sitting there thinking, oh, my God. I wish I had
6 answered that. I have to ask that you do your best to think of
7 my response to that. What would Mr. Bennett's response to that
8 be? Because I don't get to do it.

9 Page 16 talks about freedom of expression. It's a
10 constitutional principle that we have the right to express
11 ourselves. It includes the subject of sex but not obscenity,
12 right? So that's what we're dealing with here, just the
13 question of whether these images and stories are obscene, and
14 it's a constitutional question.

15 The U.S. Constitution created the question, which the
16 Supreme Court told Congress to include in the statute and
17 Congress included it in the statute, and then the Judge
18 included it in the instructions. And that's how it comes to
19 you.

20 So your job here is to determine whether these works
21 are obscene. And especially whether the government has proven
22 beyond a reasonable doubt, look at Page 3 [sic]. To prove a
23 matter is "obscene," the government must satisfy three tests...
24 The third one is: That the material, taken as a whole, lacks
25 serious literary, artistic, political, or scientific value.

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1 Now, elsewhere in the charge it says you have to
2 decide whether it has such value. But the real question is:
3 Has the government proven -- and it's expressed time after
4 time. Has the government proven beyond a reasonable doubt that
5 it lacks such value?

6 Then on Page 18, your final decision. And I think
7 the government and I are in agreement on this. But this is
8 where it comes down to a crunch, is what on Page 18 calls your
9 final decision, whether the material as a whole lacks serious
10 literary, artistic, political, or scientific value.

11 Then farther down in that paragraph: An item may
12 have serious value in one or more of these areas even if it
13 portrays sexually oriented content. And then we have the
14 specific offenses. And every time, as I said, the government
15 has to prove beyond a reasonable doubt that the stories are
16 obscene.

17 So that's the jury charge. It's a beautiful thing.
18 It's a beautiful thing because it includes these thousands of
19 years of western tradition; and it's a beautiful thing because
20 those years of tradition require that you consider the case
21 without prejudice, without thinking about, I don't want to
22 think about my community. Those aren't considerations for you.
23 The only thing is this rational common sense determination of
24 whether these works may have serious literary, artistic, or
25 scientific value or political. I don't know what the political

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1 value is, but you guys may see something and say, hey, it could
2 have this political value.

3 But that's the operation that we have to go through
4 because the government has to prove that it lacks it. You have
5 to ask yourself, Well, do we believe beyond a reasonable doubt
6 that the government has proven that it lacks such value? And
7 if it might have such value, then the government has not proven
8 that. If it might in your minds -- after deliberation. I'm
9 not talking about right now. I'm talking about after you go
10 back and talk about it, if it might in your minds have serious
11 scientific value, then a work is not obscene. Because if it
12 might, then the government hasn't proven its case beyond a
13 reasonable doubt.

14 Beyond a reasonable doubt, a doubt is a hesitation or
15 question -- right? -- in the most serious of your own affairs.
16 And I would say that this is one of the most serious of your
17 own affairs. I don't think that any of you are going to treat
18 this any less seriously than anything else that's going to
19 happen to you because you have a man's life at stake. A doubt
20 is hesitation. It's uncertainty. It's an unanswered question.

21 So bearing all that in mind, let me propose some
22 value. First of all, art and literature, who decides whether
23 something has serious artistic or literary value? Is it the
24 critics at *New York Times*? Is it your sixth grade teacher? Is
25 it you? Or is it the author of the work and the consumer of

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1 the work?

2 Are there things that you might not want to see but
3 that you recognize have serious artistic or literary value?
4 Are there works that are disturbing to you but that you
5 recognize, Okay. That might have serious artistic or literary
6 value. I don't have to read it. I don't have to look at it.

7 And you folks would never have to read or look at any
8 of this but for this trial, right? Yes, it is a sick, deviant
9 community. Mr. Berry is right about that. I'm not arguing
10 about that. I'm not arguing that the people who like to read
11 these works are not sick. But that's the people -- but
12 artistic value is the communication of feelings and of ideas.

13 And literary value is the same thing. Somebody makes
14 a painting, and it might teach you something or it might make
15 you feel something. It might even make you feel something bad.
16 It could be scary, and it has artistic value because it conveys
17 that emotion. I can't say that these works lack serious
18 artistic or literary value because they're the product of one
19 person's inner mind being communicated to other people.

20 Oh, on Count Seven, the question about the business.
21 I think that Special Agent Ewan talked about how the pictures
22 were not the draw of the Web site. I think that you'll -- I
23 think you can exclude from consideration the pictures in
24 Count Seven because those were author pictures. The picture
25 was -- the business about the stories.

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1 So going back to the stories, doubt that makes you
2 hesitate is a reasonable doubt. And so maybe artistic or
3 literary value, I don't know. But scientific value, what if
4 these stories stop some of these sick, deviant people from
5 harming children?

6 So common experience. The jury charge refers to
7 reasonable inferences from common experience. We all have
8 common experience of getting frustrated and blowing off steam.
9 Or we might have kids and they might get hyper and they might
10 get upset and we might send them to walk around the block. We
11 might have a punching bag in the garage because work is really
12 annoying and we go out and work out some frustration on the
13 bag, and it keeps us from being aggressive in the world, in
14 doing things that would be harmful to ourselves and to others.

15 What if reading and responding to these stories --
16 what if writing, reading, and responding to these stories stops
17 some sick people from harming children? Would that be
18 scientific value? It would be scientific value. If the
19 availability of these stories stop children from being harmed
20 and, yes, degrading toward children. But the children aren't
21 reading the stories. And there is no evidence that people are
22 committing crimes against children in order to produce the
23 stories, right?

24 We have a separate category of crime in federal law
25 that's child pornography which actually uses children -- abuses

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1 children to create the images and the videos. This is not
2 that. These are stories. I don't know. Maybe some of them
3 are true. Maybe some of the authors were perpetrators in the
4 stories they're describing. Maybe some of the authors were
5 victims in the stories that they're describing. Maybe some of
6 the authors were bystanders in the stories they're describing.
7 Maybe some of the stories didn't even happen. We have no idea.
8 Maybe all of them didn't even happen.

9 But what if reading them stops some of these sick,
10 deviant people from harming children? Mr. Berry might get up
11 and say, Well, what if they don't? What if they whet people's
12 appetites for actually having sex with children? And I'll take
13 the "what if" as well because my answer is, what if is a
14 reasonable doubt.

15 If you don't know beyond a reasonable doubt -- and we
16 haven't heard any evidence of this. But if you don't know
17 beyond a reasonable doubt that these stories don't have that
18 beneficial effect of keeping sick people from harming others,
19 then you can't know beyond a reasonable doubt that they lack
20 serious scientific value because that would be serious
21 scientific value.

22 The doubts here are what the government had to prove
23 beyond a reasonable doubt and failed to do. The government has
24 not proven lack of serious scientific value beyond a reasonable
25 doubt. And I don't get to respond to Mr. Berry. But remember,

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1 an unanswered question is doubt. A reasonable unanswered
2 question is a reasonable doubt. An unanswered question makes
3 you hesitate is a reasonable doubt that has to stop you from
4 convicting Mr. Arthur.

5 Here, the government has not proven beyond a
6 reasonable doubt that any of these works -- the pictures or the
7 stories -- lack serious scientific value. Please acquit
8 Mr. Arthur. Thank you.

9 THE COURT: Thank you.

10 Mr. Berry, you have seven minutes.

11 MR. BERRY: Seven minutes.

12 THE COURT: Yes, sir.

13 **CLOSING ARGUMENT BY MR. BERRY**

14 MR. BERRY: So reasonable doubt. It doesn't mean you
15 have to prove it beyond all possible doubt. It's also in your
16 instructions, okay? Reason and common sense, I'm all in favor
17 of it. You are jurors in this community. You can use your
18 reason and common sense. When you walk in that courtroom door,
19 you don't check that. You don't check your life experiences,
20 and you don't check your reason and common sense. You should
21 apply that reason and common sense. I encourage you to do so
22 here.

23 This is not a hyper-technical is there some
24 speculative metaphysical qualities of these stories whereby
25 they might -- how many times did he say "maybe" in a row there

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1 for a second? Maybe, maybe, maybe, maybe, maybe. What if,
2 what if, what if, what if. Might, might, might. Okay. And
3 then he said, What if it might have serious value? How many
4 equivocations can you put in a single sentence to establish the
5 fact that he doesn't know. All right. And he's trying to say
6 that I have to come in and prove to you -- prove to you that
7 one of these stories didn't stop a person from raping a kid.
8 That's not the burden. That is not the burden at all.

9 When you think about scientific value and he says,
10 What if some of these stories stopped a guy from harming a
11 child? Well, this is a deviant sexual group who is now getting
12 sucked into this cycle of hearing other people talk about
13 raping kids and it is normalizing that for maybe they were
14 isolated and they didn't know what to do with that, but now
15 they have these other people. And they're like, yeah,
16 like-minded. Yeah, I'm all about that.

17 There is no evidence before you as jurors that these
18 stories have any kind of scientific value to prevent a
19 pedophile from raping children.

20 MR. BENNETT: I am going to object. It's shifting
21 the burden, Your Honor.

22 THE COURT: And the jury will remember that what the
23 lawyers say is not evidence, and you have your instructions.

24 Mr. Berry.

25 MR. BERRY: Thank you. How much time do you have,

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1 Judge?

2 THE COURT: You have about five and a quarter.

3 MR. BERRY: Okay.

4 The point is you are only to consider the evidence
5 before you. So to the extent that defense counsel says, What
6 if there is some other evidence out there, the instructions
7 actually tell you to not consider that. You are not to
8 speculate. You are not to pontificate about what other
9 possible evidence there might be out there in the world. You
10 are to consider the evidence before you. And you have
11 everything you need to look at those writings, look at those
12 drawings, and remember the instructions say that you get to
13 decide whether this has any kind of value.

14 And it's also important to keep in mind that the
15 burden is: Does it lack serious value? Not does it have some
16 metaphysical quality. Does it have some nominal value to the
17 world, okay? Even if there was some nominal value, you get to
18 assess whether it's serious value, right? You could debate
19 over a beer all day long about, Well, there is value in
20 everything. There is value in every conveyance of an idea
21 because it comes from a person's mind. So everything has some
22 value.

23 But the question is: Does this lack serious value?
24 What is the serious value about talking about fucking an infant
25 child and using it as a condom that he then shoves up inside of

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1 the mother's womb? What is the serious value? It lacks that
2 serious value, ladies and gentlemen. There is none. And if
3 there was some nominal value, then that still is not serious
4 value.

5 But I submit to you that there is no value to any of
6 these stories or drawings, and I ask that you please find the
7 defendant guilty on all counts.

8 THE COURT: If you need to communicate with me during
9 your deliberations, the foreperson should write the message --
10 there are some message sheets back there -- and give it to the
11 court security officer. I'll either reply to you in writing or
12 bring you back into court to answer your message.

13 Bear in mind that you're never to reveal to any
14 person, not even to the court, how the jury stands, numerically
15 or otherwise, on any count of the indictment, until after you
16 have reached a unanimous verdict.

17 We do have to say good-bye to Ms. Oliphant and
18 Ms. Dawdy at this point. If you have items back in the jury
19 room, if you would retire with the jury, collect those items
20 and come out before they begin to deliberate, please. I'll
21 meet you -- I'll ask you to step down here to the end of the
22 hall. I'd like to visit with you. I'm going to take you into
23 the chambers and just visit with you privately for a few
24 minutes. The two of you are released from your oath at this
25 time.

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1 You're allowed to take your notebooks now. You can
2 take or leave whatever you would like to the rest of the jury.

3 Let's rise as this jury retires to deliberate.

4 (Jury leaves at 10:28 a.m.)

5 THE COURT: Let's be seated, please. Outside the
6 presence of the jury.

7 Mr. Berry, anything you want to take up while we
8 wait?

9 MR. BERRY: No, Your Honor.

10 THE COURT: Mr. Bennett?

11 MR. BENNETT: No, Your Honor. Thank you very much.

12 THE COURT: Very well done. Thank y'all both. We'll
13 be in recess. If you go very far, let Cristina know. And
14 don't go too far, please.

15 (Recess from 10:29 a.m. to 11:21 a.m.)

16 THE COURT: All right. I understand we have a
17 verdict. No display no matter what the verdict may be.

18 Just to make sure, if there is an acquittal, I guess
19 we don't have a forfeiture issue, Mr. Esparza.

20 MR. ESPARZA: No.

21 THE COURT: If there is a conviction, I plan to
22 release the jury based upon what the party that told me last
23 night -- or yesterday afternoon that you're going to go to me.

24 Is that right, Mr. Bennett?

25 MR. BENNETT: Yes, Your Honor.

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1 THE COURT: Okay. And so what we'll do is I'll
2 dismiss them and then I'll go speak with them privately while
3 you-all kind of get your heads together, if you need to. But
4 I'll try to take no more than ten minutes or so, ten or 15,
5 depending how chatty they are. And I'll come back over here
6 and we'll do that so we can get it all wrapped up. Very good.

7 All right. Anything, Mr. Berry, you want to take up
8 before we --

9 MR. BERRY: No, Your Honor.

10 THE COURT: Mr. Bennett?

11 MR. BENNETT: No, Your Honor.

12 THE COURT: Let's bring the jury in, please.

13 Let's rise for the jury.

14 (Jury enters at 11:22 a.m.)

15 THE COURT: Thank you. Please be seated.

16 Speaking through your foreperson if the foreperson
17 would stand, please. I understand the jury has a verdict; is
18 that correct?

19 PRESIDING JUROR: Yes, Your Honor.

20 THE COURT: All right. If you'll hand the envelope
21 to the court security officer. Thank you very much. And you
22 may go ahead and have a seat.

23 Cristina.

24 Will the defendant please rise and counsel.

25 THE CLERK: In Pecos 19-CR-774, United States of

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1 America vs. Thomas Alan Arthur.

2 VERDICT FORM

3 COUNT ONE

4 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
5 guilty of the offense charged in Count One of the Indictment.

6 COUNT TWO

7 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
8 guilty of the offense charged in Count Two of the Indictment.

9 COUNT THREE

10 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
11 guilty of the offense charged in Count Three of the Indictment.

12 COUNT FOUR

13 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
14 guilty of the offense charged in Count Four of the Indictment.

15 COUNT FIVE

16 We the Jury find that Defendant **Thomas Alan Arthur** is
17 guilty of the offense charged in Count Five of the Indictment.

18 COUNT SIX

19 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
20 guilty of the offense charged in Count Six of the Indictment.

21 COUNT SEVEN

22 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
23 guilty of the offense charged in Count Seven of the Indictment.

24 **SPECIAL INTERROGATORY FOR COUNT SEVEN**

25 If you find the Defendant, **THOMAS ALAN ARTHUR**, guilty

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1 of the crime charged in Count Seven of the Indictment, please
2 list the title of the stories and/or drawings you find obscene
3 in the following blank page.

4 Stories

5 35AA - Katrina and her daddy by Que?

6 35BB - Tracy.

7 5A - A spectacle to beat all other.

8 6A - Baby Wank.

9 7A - Buttfucking a 10-year-old girl.

10 8A - Replacing my wife - She had it coming.

11 9A - The Baby Mangler.

12 Pictures

13 10A - Bio picture for Netman169.

14 11A - Girls Suck.

15 12A -Load the mule.

16 COUNT EIGHT

17 We the Jury find that Defendant **THOMAS ALAN ARTHUR** is
18 guilty of the offense charged in Count Eight of the Indictment.

19 COUNT NINE

20 We the Jury find that defendant **THOMAS ALAN ARTHUR** is
21 guilty of the offense charged in Count Nine of the Indictment.

22 Signed by the foreperson of the jury today's date.

23 THE COURT: Thank you.

24 Mr. Bennett, does the defense wish the Court to poll
25 the jury?

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1 MR. BENNETT: I don't believe it necessary, Your
2 Honor.

3 THE COURT: Thank you. You may be seated.

4 Ladies and gentlemen of the jury, you're discharged
5 from your oath. The attorneys -- and I've asked them if it was
6 okay to tell you this. They're going to go to me for the
7 forfeiture which releases you from that responsibility.

8 I will be the first to say thank you for your
9 service. Being released from your oath means you can speak
10 with anybody you want and you can tell them anything about the
11 case. It also means you don't have to talk to anybody you
12 don't want to or tell them anything. It is completely up to
13 you.

14 I don't know that you'll receive any calls.
15 Sometimes attorneys will call or an investigator or a
16 paralegal, somebody might call you following the trial later,
17 maybe next week or something or later this week, but if they
18 do, you're welcome to speak with them, of course. I would
19 never tell you not to. But you don't have to. And you're
20 welcome -- if they won't take no for an answer, you're welcome
21 to refer them to me, and they likely won't call me.

22 And I will say during a pandemic, I think it's turned
23 out -- we've learned if anybody wants to speak with you, it's
24 better to do it over the phone than by visiting with you
25 privately because that's increased risk of exposure. And I say

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1 that only from experience, that we've had that issue.

2 So with that, I want to ask you to retire one more
3 time to the jury room. I'm going to come back and speak with
4 you for just a few minutes privately as long as you want to
5 talk to me, but it shouldn't take us very long.

6 You're welcome to leave any of your materials here.
7 You're welcome to leave them in the jury room as well. All
8 right. So I thank you for that.

9 And with that, we're going to rise one more time as
10 you exit, and I'll see you a few minutes. Thank you.

11 (Jury leaves at 11:28 a.m.)

12 THE COURT: Please be seated. I'll be back shortly.

13 (Recess from 11:29 a.m. to 11:56 a.m.)

14 THE COURT: All right. The parties are present, all
15 the parties, including Mr. Arthur.

16 The Court having received a verdict of guilty on all
17 nine counts in the criminal case, we have a criminal
18 forfeiture, notice of United States of America's Demand for
19 Forfeiture to take up.

20 And, Mr. Arthur, you're familiar, of course, with the
21 indictment, but the indictment goes on to say in the Demand for
22 Forfeiture that under obscenity violations and the forfeiture
23 statutes, it recites the criminal forfeiture statute and
24 Title 18, United States Code, Section 1467. And it says
25 basically that: Notice of Forfeiture includes but is not

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1 limited to the following properties:

2 Real property located and situated at 1260 Angel
3 Road, Alpine, Brewster County, Texas 79830, with all buildings,
4 appurtenances, and improvements thereon and any and all surface
5 and subsurface rights, title, and interests, if any, and being
6 more fully described as follows.

7 And it goes through a description of Section 23,
8 Block 217, T & St. L -- I guess St. Louis Railway Company,
9 Brewster County, Texas, to wit, and then it goes through the
10 directions and whatnot being -- and that being 250 acres of
11 land, more or less.

12 And then it lists some personal properties as well,
13 which includes it looks like: LG tablet; CAT phone; two
14 Motorola ic502 flip phones; paper with passwords and user names
15 written; Sony Vaio computer with a specific number here; hard
16 drive with a specific number; and any number of other hard
17 drives; cameras; SIM cards; cameras; laptop; compact disks;
18 98 boxes of suspected child erotica; www.mrdouble.com; and any
19 and all other property and/or accessories involved in or used
20 in the commission of the criminal offense.

21 And there is a long list, of course, and you're
22 familiar with those lists.

23 The criminal forfeiture statute that's recited states
24 that: A person who is convicted of an offense involving
25 obscene material under this chapter shall forfeit to the United

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1 States such person's interest in -

2 (1) any obscene material produced, transported,
3 mailed, shipped, or received in violation of this chapter;

4 (2) any property, real or personal, constituting or
5 traceable to gross profits or other proceeds obtained from such
6 offense; and

7 (3) any property, real or personal, used or intended
8 to be used to commit or to promote the commission of such
9 offense.

10 Mr. Bennett, is Mr. Arthur familiar with all the
11 items that have been listed there?

12 MR. BENNETT: Yes, Your Honor.

13 THE COURT: I'll go through a more thorough reading,
14 if you would rather.

15 MR. BENNETT: No, I've just consulted with Mr. Arthur
16 and he nods his head yes, that he is familiar with those.

17 THE COURT: Thank you.

18 And, Mr. Bennett, I'm sorry, I don't mean to make you
19 get up and down.

20 MR. BENNETT: That's okay. I'll just stay up.

21 THE COURT: You not only have to get up and down, you
22 have to take the mask off and put it on every time.

23 MR. BENNETT: I'll stand up and leave it off.

24 THE COURT: So let me ask you this: Does the defense
25 challenge the -- or object to the forfeiture of all the

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1 properties?

2 MR. BENNETT: We're not contesting anything in that.

3 THE COURT: Okay. Thank you.

4 Mr. Esparza?

5 MR. ESPARZA: Yes, Your Honor, we discussed it and
6 have reached the agreement. I will be filing the motion for
7 preliminary order and forfeiture first thing next week which
8 will then kick off the process to notify third parties and
9 such.

10 THE COURT: Okay. Very well. I suppose once all
11 that's done, I'll receive an order?

12 MR. ESPARZA: Yes, Your Honor. With that motion,
13 there will be a proposed order attached.

14 THE COURT: Okay. And will a motion be signed by
15 everybody or what will it look like?

16 MR. ESPARZA: Normally, it's just signed by the -- by
17 myself, Your Honor, and it will just say that the nexus was
18 agreed to at this hearing and it's been found. And we would be
19 asking for the authority to do the third parties and --

20 THE COURT: Is there any inquiry the Court needs to
21 make of Mr. Arthur today on the record?

22 MR. ESPARZA: No, Your Honor.

23 THE COURT: Okay. Very well. Thank you very much.

24 Mr. Berry, anything further for the government in
25 this trial?

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1 MR. BERRY: Nothing, Judge. Thank you.

2 THE COURT: Thank you.

3 Ms. Morrison, good to you have back.

4 MS. MORRISON: It's good to be back, Judge. Thank
5 you.

6 THE COURT: Mr. Bennett, anything further from the
7 defense?

8 MR. BENNETT: Not right now, Judge.

9 THE COURT: So what I'm going to tell -- Mr. Haygood,
10 how about you?

11 MR. HAYGOOD: I do have one thing, Your Honor. I
12 don't know if the Court wants to do this now or later, perhaps
13 at sentencing. There were a number of exhibits that we had
14 filed our proposed comparable exhibits after the --

15 THE COURT: Oh, yes.

16 MR. HAYGOOD: -- final pretrial hearing. The Court
17 did state you wanted me to do an offer of proof on those. Do
18 you want me to do that now or...

19 THE COURT: I just want you to submit under seal what
20 you want for the record.

21 MR. HAYGOOD: Very good, Your Honor.

22 THE COURT: And that's, of course, fine as long as
23 it's what we discussed at the hearing so that you can have it
24 for appellant purposes.

25 MR. HAYGOOD: Thank you, Your Honor, I'll do that.

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1 THE COURT: Sentencing is going to be set for
2 April 19, 2021, at 8:30 here in Pecos. As you-all know, that
3 can move.

4 MR. BERRY: I'm not even writing it down.
5 (Laughter)

6 THE COURT: That's how much you believe me, right?
7 (Laughter)

8 THE COURT: So, Mr. Arthur, what's going to happen --
9 if you aren't aware. You may be -- is I'll refer the case now
10 to the U.S. Probation Office. We have the supervisor of the
11 U.S. Probation Office here in the courtroom. I'll refer your
12 case to them. They're going to prepare a Presentence
13 Investigation Report. It's going to go into a number of
14 things. You're going to have input into the making of that
15 report. Mr. Bennett and Mr. Haygood are going to guide you
16 through that process. And then the -- they will receive a copy
17 of the report well before your sentencing hearing. They will
18 file objections if there are objections they're able to file on
19 your behalf. They'll share what's in the -- the information
20 that's in the report with you.

21 They're not able, due to a local rule, due to my
22 standing order, to give you a copy of it; but they will share
23 with you what's in there. They can show it to you and all
24 that. You just can't keep it. That's for your own protection,
25 actually, and it doesn't have anything to do necessarily just

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1 with the subject matter. But it protects inmates typically
2 from other inmates looking at that and getting copies of it and
3 finding sensitive information or possibly information we didn't
4 intend for others to receive. So we have done this for years
5 now. Unless there is some exception or justification the
6 defense can make me -- and I think in my three years on the
7 district bench, I've allowed one exception and probably
8 regretted it after that -- doing that.

9 But they will file objections if there are. The
10 government has the opportunity to file objections. We'll come
11 here at sentencing. If there are any objections that are
12 unresolved -- because a lot of those get resolved prior to the
13 sentencing hearing. If any are unresolved, I'll hear argument.
14 I may hear testimony if somebody wants to call witnesses or
15 take any exhibits, whatever. And then I'll make the ruling on
16 any and all objections, whether it be from the government or
17 the defense.

18 And then once that's done, your attorney will have an
19 opportunity to speak on your behalf, but you have the right and
20 you'll have the opportunity to speak to me before I sentence
21 you, okay? Do you understand?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right.

24 With that, Mr. Berry, we're done? You're good?

25 MR. BERRY: Yes, sir.

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1 THE COURT: And, Mr. Bennett, you're good?

2 MR. BENNETT: Unless my brain over here tells me
3 otherwise.

4 THE COURT: Mr. Haygood, you're good?

5 MR. HAYGOOD: We're good.

6 THE COURT: So, Mr. Haygood, if you'll stick around
7 and make sure we know -- Cristina knows, I'm admitting whatever
8 you need to make the record for the appellate purposes, okay?

9 MR. HAYGOOD: Yes, Your Honor. What I'll do is I'll
10 just file a brief motion with an introductory to this as proof
11 under Rule 103. And then the exhibits, I'll do that under
12 seal. That way they don't go to anyone and no one can download
13 them or anything like that.

14 THE COURT: Sure. Okay.

15 And I was noticing, Cristina, I think they --
16 obviously we have a thumb drive and some things across the
17 hall.

18 THE CLERK: Yes, Johnny is going to get it.

19 THE COURT: Okay. Good.

20 THE CLERK: I was waiting for you to come back.

21 THE COURT: And Ms. Martinez is here.

22 MS. MARTINEZ: Yes.

23 THE COURT: Thank you for your hard work.

24 MR. MILLER: Thank you.

25 MR. BERRY: Judge, do you want me to take your

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1 binders?

2 THE COURT: Yes.

3 That's why I was -- I was going to say, Ms. Martinez,
4 before you leave, you need to make sure I don't have any of
5 this stuff.

6 All right. So, Mr. Arthur, I remand you to the
7 custody of the United States Marshals. I'll see you at the
8 sentencing, sir. Thank you.

9 THE DEFENDANT: Thank you, Your Honor.

10 (Proceedings concluded at 12:05 p.m.)

11 * * * * *

12 C E R T I F I C A T E

13
14 I, ANN M. RECORD, Former United States Court
15 Reporter for the United States District Court in and for the
16 Western District of Texas, hereby certify that the above and
17 foregoing contains a true and correct transcript of the
18 proceedings in the above-entitled and numbered cause.

19 WITNESS MY HAND on this 14th day of September,
20 2021.

21

22

23 /s/Ann M. Record

24 Ann M. Record, RMR, CRR, CMRS, CRI
25 Former United States Court Reporter
P.O. Box 2357
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Ann M. Record, RMR, CRR, CMRS, CRI